

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ERIC RAY PRICE, #1848099,

Plaintiff,

v.

LORIE DAVIS,

Defendant.

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Case No. 6:19-CV-142-JDK-JDL

ORDER OF DISMISSAL

Plaintiff Eric Ray Price, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The civil action was referred to United States Magistrate Judge John D. Love. The Magistrate Judge issued a Report and Recommendation, concluding that the lawsuit should be dismissed under the three-strikes provision of 28 U.S.C. § 1915(g). That provision prohibits incarcerated plaintiffs from proceeding *in forma pauperis* if the plaintiffs have previously filed at least three lawsuits or appeals that were dismissed as frivolous, malicious, or for failure to state a claim--unless the plaintiff shows he is in imminent danger of serious physical injury. Docket No. 16 at 3–4.


Plaintiff filed Objections (Docket No. 17), arguing that he is in imminent danger because he was assaulted by a gang and is subject to “contaminated and unsanitary water and smoke that will kill” him. Docket No. 17 at 1. To meet the imminent danger requirement, however, the threat to Plaintiff must be “real and proximate.” *Morgan v. Fischer*, 2011 WL 4457667, at *3 (E.D. Tex. July 21, 2011) (quoting *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003)). “Allegations of past harm do not suffice; the harm must be imminent or occurring at the time that the complaint or notice of appeal is filed, and the exception refers to ‘a genuine

emergency' where 'time is pressing.'" *Id.* (quoting *Heimermann v. Litscher*, 337 F.3d 781, 782 (7th Cir. 2003)). Here, Plaintiff has not shown a genuine emergency where time is pressing and has made only conclusory allegations as to the imminent danger he faces. Plaintiff's claims are therefore barred by § 1915(g). *See, e.g., id.*

The Court, having made a *de novo* review of the Objections raised by Plaintiff, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by Plaintiff are without merit. The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is therefore

ORDERED that the Complaint is **DISMISSED WITH PREJUDICE** for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g).

So **ORDERED** and **SIGNED** this **9th** day of **July, 2019**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE